

written statement on or before January 31 of the calendar year following the calendar year in which the section 751 (a) exchange occurred to which the return under paragraph (a) relates (or, if later, 30 days after the partnership is notified of the exchange as defined in paragraph (e) of this section). The partnership shall use a copy of the completed Form 8308 as a statement unless the Form 8308 contains information with respect to more than one section 751 (a) exchange (see paragraph (a) (3) of this section). If the partnership does not use a copy of Form 8308 as a statement, the statement shall include the information required to be shown on Form 8308 with respect to the section 751 (a) exchange to which the person to whom the statement is furnished is a party. In addition, it shall state that—

(1) The information shown on the statement has been supplied to the Internal Revenue Service,

(2) A transferor of a partnership interest in a sale or exchange described in section 751 (a) of the Internal Revenue Code is required to treat a portion of any gain or loss resulting from the sale or exchange as ordinary income or loss, and

(3) The transferor in a section 751 (a) sale or exchange is required under paragraph (a) (3) of § 1.751-1 to attach a statement relating to the sale or exchange to his or her income tax return for the taxable year in which the sale or exchange occurred.

(d) *Requirement that transferor notify partnership.*—(1) *In general.* The transferor of any partnership interest in a section 751 (a) exchange shall notify the partnership of such exchange in writing within 30 days of the exchange (or, if earlier, January 15 of the calendar year following the calendar year in which the exchange occurred). The written notification from the transferor shall include the following information:

(i) The names and addresses of the transferor and transferee in the section 751 (a) exchange;

(ii) The taxpayer identification numbers of the transferor and, if known, of the transferee; and

(iii) The date of the exchange. Any transferor who notified a partnership under section 6050K (c) (1) prior to January 22, 1986 by a notification that does not meet the requirements of this paragraph (d) shall furnish such partnership with the written notification described in this paragraph (d) on or before February 21, 1986.

(2) *Return required under section 6045.* No transferor shall be required to notify a partnership of the sale or exchange of a partnership interest under

section 6050K (c) (1) or paragraph (d) (1) of this section if a return is required to be filed under section 6045 with respect to such sale or exchange.

(e) *Partnership not required to make a return or furnish statements under this section until it has notice of the exchange.* A partnership shall not be required to make a return or furnish statements under section 6050K and this section with respect to any section 751 (a) exchange until it has been notified of the exchange. For purposes of section 6050K (c) (2) and this section, a partnership is notified of a section 751 (a) exchange when either:

(1) The partnership receives the written notification from the transferor required under paragraph (d) of this section; or

(2) The partnership has knowledge that there has been a transfer of a partnership interest or any portion thereof, and, at the time of the transfer, the partnership had any section 751 property. However, no return or statement are required under section 6050K if the transfer was not a section 751 (a) exchange (e.g., a transfer which in its entirety constitutes a gift for federal income tax purposes). For purposes of this paragraph (e) (2), the partnership may rely on a written statement from the transferor that the transfer was not a section 751 (a) exchange in the absence of knowledge to the contrary. For rules applicable where the partnership is in doubt as to whether partnership property constitutes section 751 property to any extent or as to whether a transfer of a partnership interest constitutes a section 751 (a) exchange, see paragraph (a) (1) of this section.

(f) *Partnership return is to be attached to Form 1065.*—(1) *In general.* Any partnership return on Form 8308 required under this section shall be filed as an attachment to the partnership's Form 1065 for its taxable year in which the calendar year in which the section 751 (a) exchange occurred ends and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing of the partnership's Form 1065 for that taxable year (see paragraph (e) of § 1.6031-1 for the time and place for filing Form 1065).

(2) *Notification after Form 1065 is filed.* If a partnership is notified of an exchange (as defined in paragraph (e) of this section) after the partnership has filed Form 1065 for the taxable year with respect to which the exchange should have been reported, Form 8308 shall be filed with the service center or other Internal Revenue office with which the partnership's Form 1065 was filed, on or

before the thirtieth day after the partnership is notified of the exchange.

(g) *Penalties.* For penalties for failure of:

(1) Transferors to furnish the notification required by paragraph (d) of this section see section 6722 (b);

(2) Partnerships to furnish any statement required under paragraph (c) of this section see section 6722 (a); and

(3) Partnerships to file the return on Form 8308 as required by paragraph (a) of this section see section 6721.

PART 602—[AMENDED]

Control Number Under The Paperwork Reduction Act; 26 CFR Part 602

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101 (c) is amended by removing from the appropriate places in the table "1.6050K-1T . . . 1545-0941."

Par. 7. Section 602.101 (c) is amended by inserting in the appropriate places in the table "1.6050K-1 . . . 1545-0941."

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 19, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-29505 Filed 12-31-86; 8:45 am]

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Designations; Florida and New Mexico

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; amendment.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on certified designated 706 agencies. Publication of this amendment effectuates the designation of the Broward County (FL) Human Relations Commission; the Clearwater (FL) Office of Community Relations; the New Mexico Human Rights Commission; and the St. Petersburg (FL) Human Relations Department as certified 706 agencies.

EFFECTIVE DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mike Torres, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual

Compliance Programs, 2401 E Street NW., Washington, DC 20507, telephone number (202) 634-6922.

SUPPLEMENTARY INFORMATION: The Commission has determined that the Broward County (FL) Human Relations Commission; the Clearwater (FL) Office of Community Relations; the New Mexico Human Rights Commission; and the St. Petersburg (FL) Human Relations Department meet the eligibility criteria for certification of designated 706 Agencies as established in 29 CFR 1601.75(b). In accordance with 29 CFR 1601.75(c) the Commission hereby amends the list of certified designated 706 agencies to include: Broward County (FL) Human Relations Commission, Clearwater (FL) Office of Community Relations, New Mexico Human Rights Commission and St. Petersburg (FL) Human Relations Department.

Publication of this amendment to 1601.80 effectuates the designation of the following agencies as certified 706 agencies: Broward County (FL) Human Relations Commission, Clearwater (FL) Office of Community Relations, New Mexico Human Rights Commission and St. Petersburg (FL) Human Relations Department.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal Employment Opportunity, Intergovernmental relations.

PART 1601—[AMENDED]

1. The authority citation for Part 1601 continues to read as follows:

Authority: Title VII of the Civil Rights Act of 1964, as amended, Pub. L. 88-352, 78 Stat. 253; Pub. L. 89-554, 80 Stat. 662; Pub. L. 92-261, 86 Stat. 103; Pub. L. 95-555, 92 Stat. 2076; Pub. L. 95-598, 92 Stat. 269 (42 U.S.C. 2000e to 2000e-17).

§ 1601.80 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.80 by adding the Broward County (Fla.) Human Relations Commission; the Clearwater (Fla.) Office of Community Relations; the New Mexico Human Rights Commission; and the St. Petersburg (Fla.) Human Relations Department, in alphabetical order.

Signed at Washington, DC this 15th day of December, 1986.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 86-28964 Filed 12-31-86; 8:45am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 5

Claims Collection; Debt Collection Act of 1982; Salary Offset

AGENCY: Department of the Treasury.

ACTION: Temporary rule.

SUMMARY: The Department of the Treasury is issuing temporary regulations to govern the collection of debts owed to the United States by Federal employees. These regulations implement the debt collection procedures provided under section 5 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365), codified in 5 U.S.C. 5514. The Act authorizes the Federal Government to collect debts by means of offset from the salaries of Federal employees without the employee's consent, provided that the employee is properly notified and given the opportunity to exercise certain administrative rights.

EFFECTIVE DATE: These regulations are effective January 2, 1987. Comments must be submitted in duplicate on or before February 2, 1987.

ADDRESS: Send comments in duplicate to: Lorna R. Glassman, Office of the General Counsel (Administrative and General Law), Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Lorna R. Glassman, Office of the General Counsel (Administrative and General Law), Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220. Telephone (202) 566-2327.

SUPPLEMENTARY INFORMATION: Section 5 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365), codified at 5 U.S.C. 5514, makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, when the head of an agency determines that an employee of the agency is indebted to the United States, or is notified by the head of another agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her pay. The amount of the offset may not exceed 15 percent of the employee's disposable pay.

The employee must be afforded certain due process rights before salary offset deductions can begin. Under the

Act, an employee-debtor must be provided with notice of a debt and the opportunity to review the record and enter into a written repayment agreement before the Government may collect the debt by offset. The employee must notify the agency of his or her intent to exercise these rights within the time period prescribed in the regulations.

The Act requires agencies to issue regulations for salary offset consistent with the offset regulations issued by the Office of Personnel Management (OPM). OPM issued final rules on July 3, 1984 (49 FR 27470), codified in Subpart K of part 550 of title 5 of the Code of Federal Regulations. This temporary rule is consistent with OPM's regulations, and it establishes the procedures the Department will follow in making a salary offset.

Administrative Procedure Act

The Department of the Treasury has concluded that this document is interpretative because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Office of Personnel Management. Accordingly, no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(b)(A). In addition, because this rule relates to agency management and personnel, no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(a)(2). Moreover, for these reasons a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2). The Department will, however, consider any public comments before issuing a final rule.

Executive Order 12291

Because this temporary rule relates to agency management and personnel, the requirements of Executive Order 12291 do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for temporary rules the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 5

Administrative offset, Administrative practice and procedure, Claims, Debt collection, Government employees, Pay administration, Salary offset, Wages.

For the reasons set out in the preamble, Part 5 of title 31 of the Code of Federal Regulations is amended as set forth below.

PART 5—CLAIMS COLLECTION

1. Sections 5.1 through 5.4 are redesignated as Subpart A—Administrative Collection, Compromise, Termination and Referral of Claims and the authority citation for Subpart A is revised to read as follows:

Authority: 31 U.S.C. 3711.

2. Subpart B is added to read as follows:

Subpart B—Salary Offset

Sec.

- 5.5 Purpose.
- 5.6 Scope.
- 5.7 Designation.
- 5.8 Definitions.
- 5.9 Applicability of regulations.
- 5.10 Waiver requests and claims to the General Accounting Office.
- 5.11 Notice requirements before offset.
- 5.12 Hearing.
- 5.13 Certification.
- 5.14 Voluntary repayment agreements as alternative to salary offset.
- 5.15 Special review.
- 5.16 Notice of salary offset.
- 5.17 Procedures for salary offset.
- 5.18 Coordinating salary offset with other agencies.
- 5.19 Interest, penalties and administrative costs.
- 5.20 Refunds.
- 5.21 Request for the services of a hearing official from the creditor agency.
- 5.22 Non-waiver of rights by payments.

Subpart B—Salary Offset

Authority: 5 U.S.C. 5514; 5 CFR Part 550 Subpart K.

§ 5.5 Purpose.

The purpose of the Debt Collection Act of 1982 (Pub. L. 97-365), is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. These regulations implement section 5 of the Act which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management (OPM) on July 3, 1984, codified in Subpart K of part 550 of title 5 of the Code of Federal Regulations.

§ 5.6 Scope.

(a) These regulations provide Departmental procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed the Government.

(b) These regulations apply to collections by the Secretary of the Treasury from:

(1) Federal employees who owe debts to the Department; and

(2) Employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) These regulations do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in these regulations precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR Parts 101-105, 38 CFR 1.1900 *et seq.*)

§ 5.7 Designation.

The heads of bureaus and offices and their delegates are designated as designees of the Secretary of the Treasury authorized to perform all the duties for which the Secretary is responsible under the foregoing act and Office of Personnel Management Regulations: *Provided, however*, that no compromise of a claim shall be effected or collection action terminated, except upon the recommendation of the General Counsel, the Chief Counsel of the bureau or office concerned, or the designee of either. Notwithstanding the foregoing proviso, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is \$300 or less.

§ 5.8 Definitions.

As used in this part (except where the context clearly indicates, or where the term is otherwise defined elsewhere in

this part) the following definitions shall apply:

(a) "Agency" means:

(1) An Executive Agency as defined by section 105 of Title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined by section 102 of Title 5, United States Code;

(3) An agency or court of the judicial branch including a court as defined in section 610 of Title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) "Bureau Salary Offset Coordination Officer" means an official designated by the head of each bureau who is responsible for coordinating debt collection activities for the bureau. The Secretary shall designate a bureau salary offset coordinator for the Departmental offices.

(c) "Certification" means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

(d) "Creditor agency" means an agency of the Federal Government to which the debt is owed.

(e) "Debt" or "claim" means money owed by an employee of the Federal Government to an agency of the Federal Government from sources which include loans insured or guaranteed by the United States and all other amounts due the Government from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

(f) "Department" or "Treasury Department" means the Departmental Offices of the Department of the Treasury and each bureau of the Department.

(g) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. The Department shall allow the following deductions in determining disposable pay subject to salary offset:

(1) Federal employment taxes;

(2) Amounts deducted for the U.S. Soldiers' and Airmen's Home;

(3) Fines and forfeiture ordered by a court martial or by a commanding officer;

(4) Federal, state or local income taxes no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(5) Health insurance premiums;

(6) Normal retirement contributions (e.g., Civil Service Retirement deductions, Survivor Benefit Plan or Retired Serviceman's Family Protection Plan); and

(7) Normal life insurance premiums, exclusive of optional life insurance premiums (e.g., Serviceman's Group Life Insurance and "basic" Federal Employee's Group Life Insurance premiums).

(h) "Employee" means a current employee of the Treasury Department or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(i) Federal Claims Collection Standards, "FCCS," jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 *et seq.*

(j) "Hearing official" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. Except in the case of an administrative law judge, a hearing official may not be under the supervision or control of the Secretary of the Department of the Treasury when Treasury is the creditor agency.

(k) "Paying agency" means the agency of the Federal Government which employs the individual who owes a debt to an agency of the Federal Government. In some cases, the Department may be both the creditor and the paying agency.

(l) "Notice of intent to offset" or "notice of intent" means a written notice from a creditor agency to an employee which alleges that the employee owes a debt to the creditor agency and apprising the employee of certain administrative rights.

(m) "Notice of salary offset" means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

(n) "Payroll office" means the payroll office in the paying agency which is

primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee. Payroll office, with respect to the Department of the Treasury means the payroll offices of each bureau and the Office of the Assistant Secretary of the Treasury for Management for the Departmental Offices.

(o) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

(p) "Secretary" means the Secretary of the Treasury or his or her designee.

(q) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to the Department or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 5.9 Applicability of regulations.

These regulations are to be followed in instances where:

(a) The Department is owed a debt by an individual currently employed by another agency;

(b) Where the Department is owed a debt by an individual who is a current employee of the Department; or

(c) Where the Department currently employs an individual who owes a debt to another Federal Agency. Upon receipt of proper certification from the creditor agency, the Department will offset the debtor-employee's salary in accordance with these regulations.

§ 5.10 Waiver requests and claims to the General Accounting Office.

These regulations do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 5.11 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency provides the employee with written notice that he/she owes a debt to the Federal Government, a minimum of 30 calendar

days before salary offset is initiated. When Treasury is the creditor agency this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available to the Department and will state:

(1) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full;

(3) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(4) An explanation of the Department's policy concerning interest, penalties and administrative costs including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards, 4 CFR 101.1 *et seq.*

(5) The employee's right to inspect and copy all records of the Department pertaining to the debt claimed or to receive copies of such records if personal inspection is impractical;

(6) The right to a hearing conducted by an impartial hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Secretary) with respect to the existence and amount of the debt claimed, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in 5.12;

(7) If not previously provided, the opportunity (under terms agreeable to the Department) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency (4 CFR 102.2(e));

(8) The name, address and phone number of an officer or employee of the Department who may be contacted concerning procedures for requesting a hearing;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a petition for hearing within 15 calendar days after receipt of such notice of intent will stay the commencement of collection proceedings;

(11) The name and address of the office to which the petition should be sent;

(12) That the Department will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than thirty (30) days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than sixty (60) days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of Title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code or any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee (5 U.S.C. 5514); and

(17) Proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Department is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

§ 5.12 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the office

designated in the notice of intent. See § 5.11(a)(8). The request (or petition) for hearing must be received by the designated office not later than fifteen (15) calendar days after the date of the notice. The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to Timely Submit.* (1) If the employee files a petition for a hearing after the expiration of the fifteen (15) calendar day period provided for in paragraph (a) of this section, the Department may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or because of a failure to receive actual notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Department's offset schedule, if the employee:

(i) Fails to file a request for a hearing unless such failure is excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines failure to appear was due to circumstances beyond the employee's control (5 U.S.C. 5514).

(c) *Representation at the Hearing.* The Creditor Agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her own expense.

(d) *Review of Departmental Records Related to the Debt.* (1) In accordance with § 5.11(a)(5), an employee who intends to inspect or copy creditor agency records related to the debt must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within fifteen (15) calendar days after receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements shall be made to send copies of such records to the employee.

(e) *Hearing Official.* Unless the Department appoints an administrative law judge to conduct the hearing, the Department must obtain a hearing official who is not under the supervision

or control of the Secretary of the Treasury.

(f) *Obtaining the Services of a Hearing Official when the Department is the Creditor Agency.* (1) When the debtor is not a Department employee, and in the event that the Department cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the Department may contact an agent of the paying agency designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations or as otherwise designated by the agency, and request a hearing official.

(2) When the debtor is a Department employee, the Department may contact any agent of another agency designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations or otherwise designated by that agency, to request a hearing official.

(g) *Procedure.* (1) After the employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official or administrative law judge, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) *Paper hearing.* If the hearing official or administrative law judge determines that an oral hearing is not necessary, he or she will make the determination based upon a review of

the available written record (5 U.S.C. 5514).

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this Subpart. See, 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

(h) *Date of Decision.* The hearing official or administrative law judge shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than sixty (60) days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In such case the sixty (60) day decision period shall be extended by the number of days by which the hearing was postponed.

(i) *Content of Decision.* The written decision shall include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(j) *Failure to Appear.* In the absence of good cause shown (e.g., excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this Subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall schedule a new hearing date upon the request of the agency representative. Both parties shall be given reasonable notice of the time and place of the new hearing.

§ 5.13 Certification.

(a) The bureau salary offset coordination officer shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a hearing; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) The employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Government's right to collect the debt first accrued;

(4) The Department's regulations have been approved by OPM pursuant to 5 CFR Part 550, Subpart K;

(5) The amount and date of the lump sum payment;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(7) The dates the action(s) was taken and that it was taken pursuant to 5 U.S.C. 5514.

§ 5.14 Voluntary repayment agreements as alternative to salary offset.

(a) In response to a notice of intent to an employee may propose to repay the debt as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any proposal under this paragraph must be received by the official designated in that notice within fifteen (15) calendar days after receipt of the notice of intent.

(b) When the Department is the creditor agency and in response to a timely proposal by the debtor, the Secretary will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Secretary's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the Secretary decides that the proposed repayment agreement is unacceptable, the employee will have fifteen (15) days from the date he or she received notice of the decision to file a petition for a hearing.

(d) If the Secretary decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and the Secretary.

§ 5.15 Special review.

(a) An employee subject to salary offset or a voluntary repayment agreement, may, at any time, request a special review by the creditor agency of the amount of the salary offset or voluntary payment, based on materially changed circumstances such as, but not limited to catastrophic illness, divorce, death, or disability.

(b) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Secretary shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Secretary shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

(e) If the special review results in a revised offset or repayment schedule, the bureau salary offset coordination officer shall provide a new certification to the paying agency.

§ 5.16 Notice of salary offset.

(a) Upon receipt of proper certification of the Creditor Agency, the bureau payroll office will send the employee a written notice of salary offset. Such notice shall, at a minimum:

(1) Contain a copy of the certification received from the creditor agency; and

(2) Advise the employee that salary offset will be initiated at the next officially established pay interval.

(b) The bureau payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 5.17 Procedures for salary offset.

(a) The Secretary shall coordinate salary deductions under this subpart.

(b) The appropriate bureau payroll office shall determine the amount of an employee's disposable pay and will implement the salary offset.

(c) Deductions shall begin within three official pay periods following receipt by the payroll office of certification.

(d) *Types of Collection*—(1) *Lump-Sum Payment.* If the amount of the debt is equal to or less than 15 percent of disposable pay, such debt generally will be collected in one lump-sum payment.

(2) *Installment Deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment

deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Lump-Sum Deductions from Final Check.* A lump-sum deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Lump-Sum Deductions from Other Sources.* Whenever an employee subject to salary offset is separated from the Department, and the balance of the debt cannot be liquidated by offset of the final salary check, the Department, pursuant to 31 U.S.C. 3716, may offset any later payments of any kind against the balance of the debt.

(e) *Multiple Debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the bureau payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of Debts Owed to Treasury.* For Treasury employees, debts owed to the Department generally take precedence over debts owed to other agencies. In the event that a debt to the Department is certified while an employee is subject to a salary offset to repay another agency, the bureau payroll office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Department can be collected in one pay period, the bureau payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the Department's debt. When an employee owes two or more debts, the best interests of the Government shall be the primary consideration in the determination by the payroll office of the order of the debt collection.

§ 5.18 Coordinating salary offset with other agencies.

(a) *Responsibility of the Department as the creditor agency.*

(1) The Secretary shall coordinate debt collections and shall, as appropriate:

(i) Arrange for a hearing upon proper petition by a Federal employee; and

(ii) Prescribe, upon consultation with the General Counsel, such practices and procedures as may be necessary to carry out the intent of this regulation.

(2) The head of each bureau shall designate a salary offset coordination officer who will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of 5.11;

(ii) Ensuring that each certification of debt sent to a paying agency is consistent with the requirements of 5.13;

(iii) Obtaining hearing officials from other agencies pursuant to § 5.12(f); and

(iv) Ensuring that hearings are properly scheduled.

(3) *Requesting recovery from current paying agency.* Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Department must:

(i) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Department's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) Advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(iii) Except as otherwise provided in this paragraph, submit a debt claim containing the information specified in paragraphs (a)(3)(i) and (ii) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency;

(iv) If the employee is in the process of separating, the Department must submit its debt claim to the employee's paying agency for collection as provided in § 5.12. The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (b)(4) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the Department must submit a properly certified claim to the agency responsible

for making such payments before the collection can be made.

(v) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Department may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund (5 CFR 831.1801 *et seq.*) or other similar funds, be administratively offset to collect the debt (See 31 U.S.C. 3716 and the FCCS).

(4) When an employee transfers to another paying agency, the Department shall not repeat the due process procedures described in 5 U.S.C. 5514 and this Subpart to resume the collection. The Department must review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the paying agency.

(b) *Responsibility of the Department as the paying agency—(1) Complete claim.* When the Department receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The employee must receive written notice that the Department has received a certified debt claim from the creditor agency (including the amount) and written notice of the date salary offset will begin and the amount of such deductions.

(2) *Incomplete claim.* When the Department receives an incomplete certification of debt from a creditor agency, the Department must return the debt claim with notice that procedures under 5 U.S.C. 5514 and this Subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Department is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Department, the employee transfers to a different agency before the debt is collected in full, the Department must certify the total amount collected on the debt. One copy of the certification must be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

§ 5.19 Interest, penalties and administrative costs.

The Department shall assess interest, penalties and administrative costs on

debts owed pursuant to 31 U.S.C. 3717 and 4 CFR 101.1 *et seq.*

§ 5.20 Refunds.

(a) In instances where the Department is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owing the United States; or

(2) An administrative or judicial order directs the Department to make a refund.

(b) Unless required or permitted by law or contract, refunds under this subsection shall not bear interest.

§ 5.21 Request for the services of a hearing official from the creditor agency.

(a) The Department will provide a hearing official upon request of the creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement.

(b) The Department will provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(c) The bureau salary offset coordination officer will appoint qualified personnel to serve as hearing officials.

(d) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended, 31 U.S.C. 1535.

§ 5.22 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this Subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

Dated: December 22, 1986.

John F.W. Rogers,

Assistant Secretary of the Treasury for Management.

[FR Doc. 86-29433 Filed 12-31-86; 8:45 am]

BILLING CODE 4810-25-M

31 CFR Part 5

Debt Collection; Tax Refund Offset

AGENCY: Department of the Treasury.

ACTION: Temporary rule and request for comments.

SUMMARY: The Department of the Treasury is issuing these regulations to establish a procedure by which delinquent debts owed to the United States will be referred to the Internal Revenue Service for collection by offset against Federal income tax refunds. These regulations implement 31 U.S.C. 3720A, which authorizes Federal agencies to notify the Internal Revenue Service of a past-due legally enforceable debt for the purpose of offsetting the debtor's tax refund. These regulations affect any taxpayer who has made an overpayment of taxes and who owes a past-due legally enforceable debt to a bureau of the Department of the Treasury.

These regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1986, and before January 1, 1988, and are effective upon publication. The Bureau of the Public Debt and the United States Mint have been identified as eligible to enter into an agreement with the IRS with respect to participation in the pilot tax refund program for 1987.

EFFECTIVE DATES: These regulations are effective January 2, 1987. Comments must be submitted in duplicate on or before February 2, 1987.

ADDRESS: Send comments in duplicate to: Lorna R. Glassman, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220. Telephone (202) 566-2327.

FOR FURTHER INFORMATION CONTACT:

Lorna R. Glassman, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220. Telephone (202) 566-2327.

SUPPLEMENTARY INFORMATION:

The Secretary of the Treasury has established procedures each bureau will follow to implement the authority of the Department to refer debts to the Internal Revenue Service ("IRS" or "Service") for collection by offset against tax refunds owed to named persons. Section 3720A of Title 31, United States Code allows the IRS to reduce a refund of a taxpayer's overpayment of tax by the amount of any legally enforceable debt which is owed to a Federal agency and is at least three months overdue. Section 3720A also requires the agency to give taxpayer-debtors sixty (60) days notice of the agency's intention to use the

provisions of this section. Under this authority, designated bureaus of the Department may refer to the IRS for collection by tax refund offset, from refunds otherwise payable in calendar year 1987, past-due legally enforceable debts owed to the bureau if: (i) The debts are eligible for offset pursuant to 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code ("Code"), Temporary Treasury Regulation 301.6402-6T and the Memorandum of Understanding ("MOU" or "agreement") between the bureau and the IRS, and (ii) each bureau provides the information called for in the MOU for each debt. The temporary rule and MOU between the IRS and the bureau set forth terms under which the bureau is identified by the Commissioner of Internal Revenue ("Commissioner") as eligible to participate in the tax refund offset program for 1987. The MOU further describes the respective responsibilities of the bureau and the IRS for implementing and administering section 2653 of the Deficit Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 1153) with respect to collection by refund offset of certain past-due legally enforceable debts owed to the bureau and provides for reimbursement to the IRS for the costs in making such collections.

Administrative Procedure Act

This is an interpretative rule because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Internal Revenue Service. Accordingly, it is not subject to the notice and public comments requirement of the Administrative Procedure Act pursuant to 5 U.S.C. 553(b)(A). As a matter of policy, however, the Department will consider any public comments before issuing a final rule.

In order to participate in the Internal Revenue Service's Tax Refund Offset Program in calendar year 1987, the Department must promulgate regulations that are effective immediately. Therefore, pursuant to 5 U.S.C. 553(d)(3), good cause is found for making this rule effective immediately.

Executive Order 12291

This temporary rule is not a "major rule" under Executive Order 12291 because it will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or

on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for temporary rules, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 5

Administrative offset, Administrative practice and procedure, Claims, Debt collections, Government employees, Pay administration, Salary Offset, Tax Refund Offset, Wages.

For the reasons set forth in the preamble, Part 5 of Title 31 of the Code of Federal Regulations is amended as set forth below.

PART 5—CLAIMS COLLECTION

Subpart C is added to read as follows:

Subpart C—Tax Refund Offset

- Sec.
- 5.23 Applicability and scope.
 - 5.24 Designation.
 - 5.25 Definitions.
 - 5.26 Preconditions for department participation.
 - 5.27 Procedures.
 - 5.28 Referrals of debts for offset.
 - 5.29 Notice requirements before offset.

Subpart C—Tax Refund Offset

Authority: 31 U.S.C. 3720A; 26 CFR 301.6402-6T.

§ 5.23 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514;

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(4) With respect to which the bureau has given the taxpayer at least sixty (60)

days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and determined that an amount of such debt is past-due and legally enforceable;

(5) Which, in the case of a debt to be referred to the Service after June 30, 1986, has been disclosed by the bureau to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c;

(6) With respect to which the Department has notified or has made a reasonable attempt to notify the taxpayer that:

- (i) The debt is past due, and
 - (ii) Unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax; and
- (7) Is at least \$25.

§ 5.24 Designation.

The heads of bureaus and their delegates are designated as designees of the Secretary of the Treasury authorized to perform all the duties for which the Secretary is responsible under the foregoing statutes and IRS Regulations: *Provided, however*, that no compromise of a claim shall be effected or collection action terminated, except upon the recommendation of the bureau Chief Counsel or his or her designee.

Notwithstanding the foregoing proviso, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is \$300 or less.

§ 5.25 Definitions.

For purposes of this subpart: "Commissioner" means the Commissioner of the Internal Revenue Service.

"Debt" means money owed by an individual from sources which include loans insured or guaranteed by the United States and all other amounts due the U.S. from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines, forfeitures (except those arising under the Uniform Code of Military Justice), administrative costs and all other similar sources.

"Memorandum of Understanding" (MOU or agreement) means the agreement between the IRS and the individual bureaus which prescribes the specific conditions the bureaus must meet before the IRS will accept referrals for tax refund offsets.

§ 5.26 Preconditions for department participation.

(a) The Department, through the individual bureaus, will provide information to the Service within the time frame prescribed by the Commissioner of the IRS to enable the Commissioner to make a final determination as to the each bureau's participation in the tax refund offset program. Such information shall include a description of:

- (1) The size and age of the bureau's inventory of delinquent debts;
- (2) The prior collection efforts that the inventory reflects; and
- (3) The quality controls the bureau maintains to assure that any debt the bureau may submit for tax refund offset will be valid and enforceable.

(b) In accordance with the timetable specified by the Commissioner, the bureau will submit test magnetic media to the IRS, in such form and containing such data as the IRS shall specify.

(c) The bureau shall establish a toll free telephone number that the IRS will furnish to individuals whose refunds have been offset to obtain information from the bureau concerning the offset.

(d) The bureau shall enter into a separate agreement with the IRS to provide for reimbursement of the Service's cost of administering the pilot tax refund offset program in 1987.

§ 5.27 Procedures.

(a) The bureau head or his or her designee shall be the point of contact with the IRS for administrative matters regarding the offset program.

(b) The bureaus shall ensure that:

(1) Only those past-due legally enforceable debts described in § 5.23(b) are forwarded to the IRS for offset; and

(2) The procedures prescribed in the MOU between the bureau and the IRS are followed in developing past-due debt information and submitting the debts to the IRS.

(c) The bureau shall submit a notification of a taxpayer's liability for past-due legally enforceable debt to the IRS on magnetic media as prescribed by the IRS. Such notification shall contain:

(1) The name and taxpayer identifying number (as defined in section 6109 of the Internal Revenue Code) of the individual who is responsible for the debt;

(2) The dollar amount of such past-due and legally enforceable debt;

(3) The date on which the original debt became past-due;

(4) The designation of the referring bureau submitting the notification of liability and identification of the

referring agency program under which the debt was incurred;

(5) A statement accompanying each magnetic tape by the referring bureau certifying that, with respect to each debt reported on the tape, all of the requirements of eligibility of the debt for referral for the refund offset have been satisfied. See § 5.23(b).

(d) A bureau shall promptly notify the IRS to correct Treasury data submitted when the bureau:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on such debt; or

(3) Receives notification that the individual owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(e) When advising debtors of an intent to refer a debt to the IRS for offset, the bureau shall also advise the debtors of all remedial actions available to defer or prevent the offset from taking place.

§ 5.28 Referral of debts for offset.

(a) A bureau shall refer to the Service for collection by tax refund offset, from refunds otherwise payable in calendar year 1987, only such past-due legally enforceable debts owed to the Department:

(1) That are eligible for offset under the terms of 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6402-6T, and the MOU; and

(2) That information will be provided for each such debt as is required by the terms of the MOU.

(b) Such referrals shall be made by submitting to the Service a magnetic tape pursuant to § 5.27(c), together with an accompanying written certification to the Service by the bureau that the conditions or requirements specified in 26 CFR 301.6402-6T and the MOU have been satisfied with respect to each debt included in the referral on such tape. The bureau's certification shall be in the form specified in the MOU.

§ 5.29 Notice requirements before offset.

(a) The bureau must notify, or make a reasonable attempt to notify, the individual that:

(1) The debt is past due, and

(2) Unless repaid within 60 days thereafter, the debt will be referred to the Service for offset against any refund of overpayment of tax;

(b) The bureau shall provide a toll free telephone number for use in obtaining information from the bureau concerning the offset.

(c) The bureau shall give the individual debtor at least sixty (60) days from the date of the notification to present evidence to the bureau that all or part of the debt is not past-due or legally enforceable. The bureau shall consider the evidence presented by the individual and shall make a determination whether an amount of such debt is past-due and legally enforceable. For purposes of this subsection, evidence that collection of the debt is affected by a bankruptcy proceeding involving the individual shall bar referral of the debt to the Service.

(d) Notification given to a debtor pursuant to paragraphs (a), (b) and (c) of this section shall advise the debtor of how he or she may present evidence to the bureau that all or part of the debt is not past-due or legally enforceable. Such evidence may not be referred to, or considered by, individuals who are not officials, employees, or agents of the United States in making the determination required under paragraph (c). Unless such evidence is directly considered by an official or employee of the bureau, and the determination required under paragraph (c) of this section has been made by an official or employee of the bureau, any unresolved dispute with the debtor as to whether all or part of the debt is past-due or legally enforceable must be referred to the bureau for ultimate administrative disposition, and the bureau must directly notify the debtor of its determination.

Dated: December 22, 1986.

John F.W. Rogers,
Assistant Secretary of the Treasury for
Management.

[FR Doc. 86-29434 Filed 12-31-86; 8:45 am]
BILLING CODE 4810-25-M

31 CFR Part 5

Claims Collection; Debt Collection Act of 1982; Administrative Offset

AGENCY: Department of the Treasury.

ACTION: Temporary rule and request for comments.

SUMMARY: The Department of the Treasury is issuing temporary regulations to govern the collection of debts owed to the United States which arose from transactions involving the Department or any of its components. These regulations implement debt collection procedures provided under section 10 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365), which is codified in 31 U.S.C. 3716. The Act authorizes the Federal Government to use administrative offset to collect

debts. If the debtor is properly notified and given the opportunity to exercise certain due process rights, and the debtor is owed monies by the United States as a result of other transactions, then the debt can be administratively offset from monies owed by the United States without the debtor's consent.

EFFECTIVE DATE: These regulations are effective January 2, 1987. Comments in duplicate must be received by February 2, 1987.

ADDRESS: Send comments to Lorna R. Glassman, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Lorna R. Glassman, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220. Telephone (202) 566-2327.

SUPPLEMENTARY INFORMATION: Section 10 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365) makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect debts.

Under the Act, administrative offset may be initiated when the head of an agency determines that a debtor is indebted to the United States, or is notified by the head of another agency that a person or entity is indebted to the United States and that the debtor is owed monies by the United States as a result of transactions with a Federal agency. The debt may then be collected by administratively offsetting the debt against the amount due.

The debtor will be afforded certain due process rights before administrative offset deductions are initiated. Before the debt can be collected by administrative offset, a debtor must be provided with (1) notice that a debt is owed, (2) the opportunity to review the record, and (3) the option to enter into a written repayment agreement. The debtor must notify the agency of his or her intent to exercise these rights within the time period prescribed in the regulations.

The agency may initiate an administrative offset prior to the completion of the due process requirements if failure to do so would substantially jeopardize the agency's ability to collect the debt and if the time remaining before payment is to be made